



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5957-99

13 December 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 24 June 1981 for three years at age 17. The record reflects that you were advanced to PFC (E-2) and served for 10 months without incident. However, during the 22 month period from April 1982 to February 1984 you received three nonjudicial punishments (NJP) for absence from your appointed place of duty, failure to obey a lawful order, two periods of unauthorized absences totalling about 10 days, operating a motor vehicle without a license, and a false official statement. During this period, you were also counseled regarding your failure to maintain sufficient funds in your bank account for checks written to the Marine Corps Exchange.

On 12 April 1984 you were convicted by general court-martial of 47 specifications of writing checks with insufficient funds totalling more than \$7,000. You were sentenced to confinement at hard labor for 18 months, forfeitures of \$400 per month for 18 months, reduction in rank to PVT (E-1), and a bad conduct

discharge. The Navy Board of Review affirmed the findings and the sentence on 23 July 1984. The Court of Military Appeals denied your petition for review but the clemency board remitted the remaining sentence to confinement effective 14 December 1984. Restoration to duty was denied. The record reflects that you were placed on appellate leave on 28 December 1984 and received the bad conduct discharge on 18 July 1985.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, low test scores, and the fact that it has been more than 14 years since you were discharged. The Board noted your contention that the date of release from active duty on your DD Form 214 is incorrect and should read 24 December 1984. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your record of three NJPs and the serious nature of the offenses of which convicted by general court-martial. While you were placed on appellate leave in December 1984, you were not released from active duty. Although it appears the appellate review process was completed before you were placed on appellate leave, the separation activity cannot discharge an individual until it is notified that the appellate review process has been completed. That date cannot be determined from available records. Absent evidence to the contrary, and you have provided none, a presumption exists that the date of your discharge as shown on the DD Form 214 is correct. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director